



Montana Fish, Wildlife & Parks

SENATE FISH AND GAME

EXHIBIT NO. 1

DATE 3-20-07

BILL NO. HB 440

P. O. Box 200701

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Ref: DO133-07

March 14, 2007

Senate Fish and Game Committee
Montana Legislature - Capitol Station
Helena, MT 59620

Dear Senator:

I contacted Ed Bangs, U.S. Fish and Wildlife Service (FWS) Wolf Recovery Coordinator on March 14 to see if he agreed with my interpretation that House Bill 440, as amended, does not jeopardize the status of Montana's adequate regulatory mechanisms. His response is attached.

While his initial take, like mine, is that the bill probably would not undermine the adequacy of Montana's regulatory mechanisms, he raises an issue I had not considered. If HB 440 is passed and approved, the FWS would be required to re-examine our laws and plan and might have to re-open the public comment period after publishing a new finding. That could delay delisting, even if it did not prevent it.

This is a significant complication I had not considered prior to yesterday's hearing. Based on this potential complication, plus the fact that FWP can already do everything in Section 1 of HB 440, and has committed to continue to do everything we can to fulfill the intent of Section 2 of the bill, I would urge the committee to table HB 440 when you take executive action.

Again, I will reiterate FWP's commitment to ensure we are keeping counties and landowners fully informed about the status and distribution of wolves and learned this afternoon that we can modify the use of one of our current 800 phone numbers to include wolf sighting reports.

I apologize for not having this information available at the hearing, but believe it is important for the committee to consider the risk of passing HB 440.

Sincerely,

Christian A. Smith
Chief of Staff

Enc.

c: Rep. Debbie Barrett

Smith, Chris (FWP)

From: Ed_Bangs@fws.gov
Sent: Wednesday, March 14, 2007 1:38 PM
To: Smith, Chris (FWP)
Cc: Julie_Lyke@fws.gov; Seth_Willey@fws.gov; Mitch_King@fws.gov; Ron_Refsnider@fws.gov
Subject: RE: wolf maps

Chris- per your request I've looked over the house bill. I think this needs more than just my read so I'm asking within the USFWS for other perspectives. I didn't see anything that jumps right out after me, so by & large the bill seems fairly meaningless and I suspect that it won't not jeopardize MT's approved status, its current cooperative agreement, or its status under the 2005 10j rule. I am however a little concerned that Montana's plan may not longer be in full compliance with the effects of any 'new' law and MT's EIS may not have evaluated the potential effects of any new law. The bill does seem to suggest MT is about to change its management plan and the guidance in it- in some unknown & unanalyzed manner- ie. possibly removing entire packs? and consider such removal after a single depredation event? But, even that may not jeopardize MT 'approved' status.

However, the key to all this is ANY changes to state law or the state plan automatically **require a re-analysis** of Montana's regulatory framework by the USFWS to make sure it is still an adequate regulatory mechanism for ESA purposes. We have done and documented this process once before over the changes made to MT state law in 2005. Our commitment to monitoring the relationship between state laws and plans is a part of our litigation with WY over the relationship and consistency between their law and plan and our approval of ID's plan in 2004. We are now in a public comment period for delisting based upon our approval of the current MT law and mgt. plan [including the 2005 changes and our analysis of them]. We are currently asking for public comment and peer review of the existing MT law and plan and have provided web links to the existing MT plan as part of that peer review and public comment process. That public comment period ends May 9, 2007. Should the MT law and possibly your plan be changed from what was reviewed, I would be very concerned that the ongoing public review process [including the 6 hearings that have already been held] might no longer be considered valid. As we promised should WY develop a new law and plan- we will seek additional public comment and possibly peer review before making any final decision regarding delisting in WY- that same logic applies to all other states. I think that could mean the current delisting proposal might have to be withdrawn for MT and the entire process would have to start over- once MT figures out how it really intends to manage wolves. This exact review process could also effect ID, where a ballot initiative is being considered for 2008 that would change state law and might require all wolves in the state to be removed. Obviously if such a thing became law the USFWS would have to re-evaluate whether delisting was warranted. I'll ask our process folks if that's their read- but I think changing MT law during an active federal public comment period is asking for litigation over the legally mandated process for delisting. If I find out anything differently I'll let you know. ed

"Smith, Chris (FWP)" <crsmith@mt.gov>

To <Ed_Bangs@fws.gov>

cc

03/14/2007 12:31 PM

Subject RE: wolf maps

Thanks for the powerpoint. Can you do me a quick favor? Take a look at the revised language in HB 440 (here's a link: <http://data.opi.mt.gov/bills/2007/billpdf/HB0440.pdf>) and let me know if you have any concerns about this causing the FWS to have to reconsider the adequacy of MT's regulatory mechanisms? I don't think it does, but would appreciate your view.

3/14/2007